

MINUTES

COMMITTEE OF THE WHOLE

June 29, 2011

A meeting of the Committee of the Whole of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Mel Rapozo, Vice Chair, at the Council Chamber, 3371-A Wilcox Road, Līhu'e, Kaua'i, on Wednesday, June 29, 2011, at 3:32 p.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Dickie Chang
Honorable KipuKai Kualī'i
Honorable Nadine K. Nakamura
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura

Excused: Honorable Jay Furfaro, Council Chair

Minutes of the May 25, 2011 Committee of the Whole.

Minutes of the June 8, 2011 Committee of the Whole.

Upon motion duly made by Councilmember Chang, seconded by Ms. Yukimura, and unanimously carried, the Minutes of the May 25, 2011 and June 8, 2011 Committee of the Whole were approved.

The Committee proceeded on its agenda item as follows:

- C 2011-150 Communication (04/26/2011) from Chair Shiraishi of the Charter Review Commission, requesting Council comments regarding the Charter Amendment proposal to establish a permanent Charter Review Commission, including the burden and cost to the County to support a permanent commission.
[This item was deferred.]

Vice Chair Rapozo: As you know there is a request that the Charter Review Commission who now they're appointed with a ten (10) year term, they're requesting our comments as a possible Charter amendment that would take away the ten (10) year term and make it a permanent Commission. I had requested that Mr. Isobe be here if anyone has any questions of Mr. Isobe. Ms. Yukimura do you have questions for Mr. Isobe?

Ms. Yukimura: Actually I was, I think we just got this memo, at least I haven't seen it before from Mr. Isobe regarding Charter Review

Commission cost estimates and proposed Charter amendments summary which looks very good in terms of information that could help us give input to the Charter Commission regarding a permanent Charter Commission. I really would like some time to read it and digest it and so I was hoping that we wouldn't be concluding this issue today. In fact it seems to me that after we read this and digest it, we should have discussion amongst us and then we should prepare a written recommendation from us formally that we would all review as well.

Vice Chair Rapozo: Any other comments or discussions? I did have a question for Mr. Isobe. Mr. Isobe can you come up real quick?

There be no objections, the rules were suspended.

Vice Chair Rapozo: I've read the memo and I just got it as well Councilmember Yukimura, I just got it today. But I'm not so sure... and I guess the question I have is if they go from a ten (10) term to a unlimited term, would there be a difference in cost? Because this memo talks about what the cost is now which I don't anticipate it changing, regardless if it's a ten (10) year term or a lifetime term. It also talks about the cost should they decide to undertake a comprehensive review. Again that has no relevance whether or not they have a term or not. So I'm not so sure that, I mean this has an impact unless there is one that I had missed. Mr. Isobe, if you could help clarify that.

JOHN ISOBE, EXECUTIVE ASSISTANT TO THE MAYOR: Sure. Can you restate the question one more time, I'm sorry.

Vice Chair Rapozo: The request was for Council comments on the change or potential Charter amendment that would take away the ten (10) year term... my question is whether they have a ten (10) year term or a permanent term, that shouldn't impact the cost that the County incurs for the Commissions because that wouldn't change any of the meetings, that would not change as I see it and maybe I'm wrong.

Mr. Isobe: Well I think the changes in cost are really predicated on the amount of time we spend.

Vice Chair Rapozo: Right.

Mr. Isobe: And the amount of time is predicated on the issues that the Commission chooses to undertake so I would say if we're just going with the blended average, I would say the cost that we'd attempted to provide would probably be as accurate a cost that I can give you at this point in time.

Vice Chair Rapozo: I'm not questioning the cost, I think you did a really good job with explaining the cost and I appreciate that. It is very thorough

and I believe very accurate but my question is whether they have a ten (10) year term or a no-limit term, that cost won't change?

Mr. Isobe: In all likelihood, you are correct.

Vice Chair Rapozo: Okay.

Mr. Isobe: It's time driven... it's the amount of time that they choose to spend.

Vice Chair Rapozo: Exactly, okay. And I'm assuming that's the only thing the Charter amendment is requesting right or the Charter Commission is requesting an amendment that would just remove the ten (10) year term?

Mr. Isobe: Right and...

Vice Chair Rapozo: Would it increase their duties? Would it increase their time, I mean whether or not they have a ten (10) year term or not, the time factor would be determined by the amount of work that they choose to?

Mr. Isobe: Exactly.

Vice Chair Rapozo: Okay, thank you very much. Go ahead
Councilmember Yukimura.

Ms. Yukimura: When we say ten (10) term, what exactly do we mean by that?

Vice Chair Rapozo: Currently they're appointed to a ten (10) year term. Right now as it stands all the Commissioners on the Charter Review Commission is appointed to a ten (10) year term.

Ms. Yukimura: No they aren't.

Mr. Isobe: Well... what it is... it's just for clarification. The Charter Review Commission currently is a sitting Commission for ten (10) years. The members are appointed for three (3) year terms.

Ms. Yukimura: The Commission sits for ten (10) years.

Mr. Isobe: Correct.

Ms. Yukimura: It's in existence for ten (10) years.

Mr. Isobe: Correct and prior to the Charter Amendment the Commission would be formed once every ten (10) years. So at the end of this

quote ten (10) year term... they would revert back to becoming an active Commission once every ten (10) years.

Ms. Yukimura: Okay well then it minus that second scenario minus ten (10) years of cost.

Mr. Isobe: If they revert back to a once every ten (10) years, that is correct.

Ms. Yukimura: But if they do once every ten (10) years, how long do they... so they're created every ten (10) years but for how long?

Mr. Isobe: Typically it's been for one (1) election cycle. So they've typically have been meeting for two (2) years proposed amendments at the General Election and they would then cease to exist for another ten (10) year period and as a result the two (2) methodologies that the County and/or electorate would have would be either to offer Charter amendments via a citizens petition or via a resolution from this body, the County Council. But the opportunity for the Charter Review Commission to propose amendments would then be once every ten (10) years.

Ms. Yukimura: Okay, thank you for that explanation.

Vice Chair Rapozo: Mr. Bynum.

Mr. Bynum: Thanks for this document. I haven't seen in one (1) place all of the proposed amendments and outcomes, it's like a trip down memory lane. So thank you for this document. My one (1) question though is... does the Administration have a position on this issue?

Mr. Isobe: I believe that the Mayor has commented, I can send you a copy of his comments if you would like to see them. He has sent a letter to the Charter Review Commission.

Mr. Bynum: I would like to see that.

Mr. Isobe: Okay. I can provide that.

Vice Chair Rapozo: Thank you.

Ms. Nakamura: Can I ask what the gist of the comments is?

Mr. Isobe: I would be remiss at this point if I tried to tell you.

Ms. Nakamura: Okay, alright.

Mr. Isobe:
send you a copy.

I may be totally off base. I prefer that I just

Ms. Nakamura: So basically we just got this a few minutes ago and it looks like you sent this in early June, so something I would request that we would receive sooner, prior to the meetings so that we can be prepared in the future. Maybe we'll make that request to the Chair. So if the cost is approximately thirty thousand nine hundred dollars per year for salary, wages and other expenses... so times ten (10), so that's about three hundred nine thousand dollars for the ten (10) years it operates, plus if they do a comprehensive review, that would be another forty-three thousand... so that would be three hundred fifty-two thousand dollars let's say for this ten (10) year period that it's in operation, that we would not incur if they met only once in every ten (10) years.

Mr. Isobe:

That is correct.

Ms. Nakamura: I think more importantly is the question of how much anticipated work is there in the upcoming years and does this current Charter Review Commission have a long agenda of work that they would like to pursue, is that why this question is coming up?

Mr. Isobe: Well I think the question came up for two (2) reasons... there are those who believe that the Charter is a living document that should be in fact be revisited on a regular basis and there is a philosophy that says the Charter is... how do I put it... a document that should not be amended but in fact should be viewed as like a State Constitution or the U.S. Constitution that sets the parameters of how the government should function and really the laws that are adopted by this body should then in fact be revisited and change to meet the intent and policy of the Charter. I'm not prepared to debate either philosophy but there are those two (2) philosophies out there and I guess the continuation or the ongoing work of the Charter Review Commission is more aligned with this philosophy that says it's a living, breathing document that should be continuously reviewed and updated.

Ms. Nakamura: And one of the questions that I've asked staff to research but I haven't gotten any feedback yet on is how frequent do the other Charter Commissions of the other counties, how often do they meet, and I was just wondering offhand if you had that information?

Mr. Isobe: I don't. It's my belief that they meet once every ten (10) years but I cannot speak to that.

Ms. Nakamura: And I know it's been years since the State con-con was held, that's probably thirty (30) or forty (40) years since...

Ms. Yukimura:

Seventy-eight (78) was the last con-con.

Ms. Nakamura:
different philosophy.

Seventy-eight (78), okay. So it is a totally

Mr. Isobe: If you would like I can go back and look up
for you what the other Charter Review Commissions...

Ms. Nakamura: Okay, I think... feedback is all counties
review Charters every ten (10) years, all the other counties, so thank you very much
for that.

Vice Chair Rapozo: Thank you. Just one (1) clarification, the
moneys you're talking about and Councilmember Nakamura stated, those are costs
that are in our budget already though, that's just the cost of running the
Commission. It's not additional cost, in other words we have Boards and
Commissions that...

Mr. Isobe: Yes and we've apportioned the cost for our
office.

Vice Chair Rapozo: Right. I just didn't want the public to
think... another three hundred thousand to staff a Commission for ten (10) years.
So these are funds that are already budgeted in the Boards and Commissions Office
as well as the other agencies like the County Attorney's Office that provide legal
support and they staff your Commission meetings.

Mr. Isobe: The exception being there are certain other
expenses, i.e., publication of the Charter notices, the mailing, the public education
of proposed Charter amendments, and those kinds of things that would vary.

Vice Chair Rapozo: Right. Okay, thank you. Go ahead
Mr. Kualii'i.

Mr. Kualii'i: Aloha John, mahalo. I think I understand
when you talked about the Commission exists for ten (10) years, so it's created
every ten (10) years and you said typically for one (1) election cycle and they meet
for two (2) years and... so it sits idle for the next eight (8) years and then they... it's
recreated when it cease to exist?

Mr. Isobe: You're...

Mr. Kualii'i: So what makes it... what's the unlimited
mean then?

Mr. Isobe: It would exist as all of the other Commissions as an example...

Mr. Kualif'i: Ongoing?

Mr. Isobe: Correct, correct.

Mr. Kualif'i: So what is the need for that, I mean I see that the... in 06, 08 and 10, in all those election cycles, there were amendments that were initiated by the Commission so in fact it wasn't that it just met for two (2) years, only was involved with one (1) election cycle and then sat idle?

Mr. Isobe: Well...

Mr. Kualif'i: Because it has the ten (10) year life right?

Mr. Isobe: Currently we're in that phase, currently.

Mr. Kualif'i: But because we're beyond ten (10) years right now?

Mr. Isobe: No. We're currently in that ten (10) year window.

Ms. Yukimura: Year?

Mr. Isobe: Now, I believe the Commission... the amendment to have the Commission remain active for a period of ten (10) years was a Charter amendment that was initiated and approved I believe in 2006. So we are now in this period, this ten (10) year phase that they have been in existence now since I believe the end of 2006 going forward now to 2011 so they've been in existence roughly four (4) to five (5) years.

Mr. Kualif'i: So why is it needed? Is it just the difference between having to recreate it every ten (10) years and no longer having to do that because it's unlimited? I mean does the Commission retain the power constantly for ten (10) years and then the next ten (10) years to do the review and initiate Charter amendments?

Mr. Isobe: Well... again I think it stems from that philosophy that says that the Charter should be continuously reviewed and continuously be updated and that we should not wait for a period of ten (10) years to have a Charter Review Commission in fact go through the Charter and update it. If you have a Commission that is in existence or established in perpetuity then the Charter can be reviewed continuously, and during every election cycle potentially there could be amendments that are offered to the Charter.

Mr. Kualif'i: I don't see how that's not possible now... I mean... the Council can initiate Charter amendments, the citizens can initiate Charter amendments and at any time it would initiate wouldn't the Commission be in place already to do the review?

Mr. Isobe: Not if we go back to the Commission being established once every ten (10) years. The Charter could be amended during each election cycle, what would happen is, there's currently three (3) potential methods to do it. The first would be the County Council, the second is by citizen's petition and the third is the Charter Review Commission. If the Commission were to sit once every ten (10) years at least for a ten (10) year window, the third option would be precluded because there would be no Charter Review Commission in existence. That as you said however that does not preclude either the Council and/or the citizens from proposing amendments. But the methodology and how you do it is different from having the Charter Review Commission propose it.

Mr. Kualif'i: So in fact the life of the Charter Commission is not ten (10) years, the fact that it's brought to life, it's brought to life every ten (10) years but they just do their thing for two (2) years and then they shut down and then for eight (8) years they don't exist?

Mr. Isobe: Correct.

Mr. Kualif'i: Oh okay and that's how it's been?

Mr. Isobe: But... that's how it's been. How it is today is they have been meeting continuously now for let's say four (4) or five (5) years.

Mr. Kualif'i: So...

Mr. Isobe: But at the end of this ten (10) year cycle which began I believe in 2007 or 2006, they would cease to exist unless an amendment is proposed that they continue... what we would need to propose is the elimination of that ten (10) year Sunset provision. Right now there is a Sunset provision that says after ten (10) years the Charter Commission would Sunset and they would then come back into existence ten (10) years from that Sunset date.

Mr. Kualif'i: So there would be ten (10) years of down time.

Mr. Isobe: For the Commission.

Mr. Kualif'i: For the Commission right, thank you.

Vice Chair Rapozo: Thank you. The Charter as it's written, I guess in 2006 is when the Charter was amended and that the Charter Review Commission was established and it did provide a ten (10) year life from 2007 to 2017. That was specific because the County felt that it was time to create this Commission to review the Charter. The current language says that after 2017, the Mayor with the approval of the Council shall appoint the Charter Commission at ten (10) year interval so the vehicle is in place. I mean it's not going to go away. 2017 the Mayor will appoint a new Commission that will serve another ten (10) years or the Commission itself will be a ten (10) interval so their proposal is to remove that ten (10) years portion which is interesting but... that's where it stands. Any other questions for Mr. Isobe? Mr. Bynum.

Mr. Bynum: Is there any (inaudible) about this John, I originally asked for feedback in a certain timeframe, is the Commission frustrated that they're not getting that feedback?

Mr. Isobe: I cannot speak for the Commission. I guess if there is an urgency it would be if an amendment would be proposed then it would be in likelihood at the next General Election. If not, there is still additional election cycles that will obviously occur prior to the Commission Sunsetting but for that... for all practical purposes in this particular election cycle, I would say by the beginning of 2012 we should at least know whether or not some kind of amendment would be considered or not. So we can begin to prepare accordingly.

Mr. Bynum: I guess I'm sensitive to when the Council requests information by a certain date, we get a little uncomfortable when it doesn't happen, and this original request asks for feedback by May 12.

Mr. Isobe: That was predicated on their meeting cycles.

Vice Chair Rapozo: Yes we received it on April 28, they requested a response by May 12, we had it on our agenda by May 18 and it has been referred so... now we have it. I did speak to the Chair before he left, he did want to have this disposed of today and I agree. I think we need to dispose of this, if you folks have comments please get it to the Chair so we can provide a response to the Commission in a timely fashion but to defer this another two (2) weeks, I think is just extending the time and it wouldn't be fair to the Commission. It's really a matter of personal preference at this point. I think it's clear at this point Mr. Isobe has made it clear what the language is, it's really a matter of what you feel as individual Councilmembers, get that to the Chair so we can provide a response as soon as possible.

Yes?

Ms. Yukimura: I thought that if there was a consensus in the Council that we should share it as a Council consensus but we can't do that by

mail or email or individual... it has to be done in a meeting. I mean I think this deserves more discussion at least one (1) more term or I mean one (1) more Committee Meeting. It will give us a chance to look at this data and think through some position statement, I mean someone could do a draft and then propose it to the next Committee Meeting. I mean I think...

Vice Chair Rapozo: I'm not sure...

Ms. Yukimura: (inaudible) deliberation, it's not just individual input then we would just all write individual letters to the Charter Commission.

Vice Chair Rapozo: And that's what I'm suggesting.

Ms. Yukimura: No but I think they're asking for a Council.

Vice Chair Rapozo: They're just asking that the Administration and County Council provide comments regarding the attached Charter amendment proposal.

Ms. Yukimura: Yeah, it's not...

Vice Chair Rapozo: The Commission would like to know your thoughts and comments including what the burden and cost would be to the County. And of course they wanted it by May 12.

Ms. Yukimura: Well it doesn't say Councilmembers, it says Council and that's us as a body.

Vice Chair Rapozo: However you want to read it, I'm just saying what the Chair asked me to do and I'm going to honor his request unless you folks feel otherwise, somebody make a motion to defer and we can defer it. Like I said it's a personal matter, I don't think... I think it's a personal choice, I don't know if it's a Council matter, it's entirely up to you folks.

Ms. Yukimura: I'm willing to develop a draft statement for discussion at the next meeting.

Vice Chair Rapozo: At the full Council?

Ms. Yukimura: No, not full Council, I don't have the time to do that.

Vice Chair Rapozo: I'm sorry?

When is the next Commission meeting? John do you know the next... and you don't have to...

Ms. Yukimura: I mean I think this is a very important subject.

Vice Chair Rapozo: Whatever you decide, I'm going to... I'm telling you what I would like but that's... if you folks want it to be deferred and have the discussion, that's fine.

Mr. Kualii: I agree with Councilmember Yukimura because I think it is a Council matter and that when we talked about the three different ways the Charter amendment even gets on the ballot to begin with and that the Council is one (1) of the ways and that citizens' petition is another way, and then that the Charter Review Commission is the third and final way. There's levels of democracy and levels of involvement and levels of responsibility to the democratic process and we are the seven (7) elected Councilmembers of this County, and I think we have responsibility there. It's not, I don't believe that these three (3) ways of it getting on the Charter, on the ballot for a Charter election was necessarily meant to be equal.

Ms. Yukimura: Interesting.

Mr. Kualii: The fact that maybe this Charter Review Commission sends it and then comes back... it's part of that process and we should think that through. If we want to do it more that way, the Charter Review is not elected officials of our citizens, they're appointed by the Mayor.

Ms. Yukimura: And confirmed by us.

Mr. Kualii: And confirmed by us but not the same necessarily. So I do think it is a matter that we should look at a little further.

Ms. Yukimura: One would even argue that the three (3) year terms are really... if you're going to last for ten (10) years, you want to have members who have some continuity instead of members just continuously changing so we have even recommended a ten (10) year term, if we're going to have a ten (10) year Commission. A Commission that's every ten (10) year... I mean that's every year that lasts for ten (10) years.

Vice Chair Rapozo: I mean... they're asking for comments on the amendment that they are proposing which is the removal of that language so... that's what they're asking for... I mean we have the right, we can at a later time.

Mr. Kualifi: But it's better to figure that out now especially if we're able to collectively, because then we might influence whether that ends up as an amendment or not.

Ms. Yukimura: Yes.

Mr. Kualifi: I'd rather do that now as our responsibility than now to be going in separate directions when it's election time.

Vice Chair Rapozo: That's fine. Go ahead Mr. Bynum.

Mr. Bynum: It's an interesting discussion and I have mixed feelings but I think Mr. Isobe characterized it well, is the Charter Commission an ongoing thing? In that case, I was thinking if I'm a Charter Commissioner, if I know it's an ongoing Commission and it's like we schedule Monday meetings, see what the public brings us, kind of business as usual but if I have a limited term, I think I might and maybe this will open a can of worms or something... but I might say you know what, let's get a consultant that knows constitutional law and gives us a recommendation about are there flaws, are there issues, what should you address because I want to get this document set, right and then Charter Commission amendments are going to be rare things. I think that's the original intent was that this is our constitution, changes should be difficult and thoughtful and you know it hasn't been used that way. This is healthy because... it's like... maybe we really need to look on how we get Charter amendments because it's been used as kind of an initiative process because initiatives are more difficult to get than Charter amendments under the current rules right, from a citizens driven perspective. I always thought it should be the other way around, the initiatives that are targeted to a specific issue, should be somewhat easier than a Charter amendment. I remember supporting the equal rights amendment in the 70s and working for years and you know that was a constitutional change, you had to get two-thirds of the State and it didn't end up passing. I wonder if we might have a different world if it would have because if it had for instance we couldn't live with the gender and balance and pay that the whole country has so... it's an really interesting discussion and I find myself wanting to have some dialog with some of the Charter Commission members which I haven't done. But I think Mr. Isobe characterized it as... the majority there seems to think it's more of an ongoing thing or else why would they put this forward. But I haven't discussed it with them so those are just some of my thoughts.

Ms. Yukimura: And you know by having a discussion here on the floor, we also allow the community to engage in the discussion too. And it's an important discussion to have and I think there's not a big rush, even though...

Vice Chair Rapozo: We're already a couple months late.

Ms. Yukimura: I know but they're not going to be proposing amendments really until next year, so I'd rather take the time now to discuss it rather than next year when there's... you know we're in this election bind and there's not very conducive to very thoughtful discussion.

Vice Chair Rapozo: I'll entertain a motion to... go ahead.

Ms. Nakamura: For myself, I think this initiative to create this ten (10) year term was to give this Charter Review Commission time to deal with (inaudible) amendments that were being proposed at... a few years ago. And to really look into, dive into these issues and give it thoughtful consideration and then there was a Sunset at the end for a reason I believe. You know once this back log got addressed then we go on to the ten (10) year intervals of review. My husband served on the Charter Review Commission when it was a ten (10) year review process and it was a very intense process involving the community dialog, agency dialog and very rich decision making that had to take place in the very limited time period but put forth a lot of good proposals. I think that process worked. For myself, I can tell you that this compromise of having the Charter Commission work for the last ten (10) year period and then moving back to the original ten (10) year intervals works but to give in that ten (10) year interval give the Commission enough time to do their homework, so it's not just nine (9) months or... give them a full two (2) years to do their process correctly and to have the resources. I think that's the other part is if they're going to do it give them the resources to be effective and the staff support. I would rather see that happen eight (8) years and then give them two (2) years of full staff support and resources to do a better job than to carry out and spread it out over ten (10) year period or making it a continuous Commission.

Ms. Yukimura: May I make a motion to defer?

Vice Chair Rapozo: Sure. Is there any other discussion before?
Okay, go ahead.

He's going to second it, he's ready to second.

Mr. Bynum: Oh?

Vice Chair Rapozo: Oh go ahead Mr. Bynum.

Mr. Bynum: Just a thought maybe if we defer this, we can ask the Charter Commission members to come and have a dialog. I feel like I need to do that, I may not, given some personal constraints in the next two (2) weeks... in fact I won't be here two (2) weeks from now, I forgot about that because I think this is very interesting and I have to add that... Councilmember Nakamura hit it on the head, to make sure they have... if their mandate is get this document solid, that we can live with or without changes for a long time, then give them the resources they

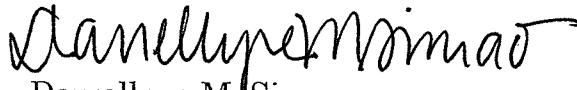
need to make that analysis and so I'm warming to the idea that maybe we need a consultant who looks at constitutional law and says hey there's some fundamental flaws in your document or here's some suggestions I would make. I don't know how the Commission would feel about that or other members.

Vice Chair Rapozo: We will send a invitation to Mr. Shiraishi, the Commission Chair to be present in two (2) weeks and the Charter does require appropriate staffing. So if the Charter Commission needs staffing, we are mandated to provide it by Charter as it's currently written as with all other commissions. We will send that. Staff if you could make a note to invite Mr. Shiraishi or a designated representative from the Charter Review Commission in two (2) weeks.

Upon motion duly made by Ms. Yukimura, seconded by Mr. Chang, and unanimously carried, C 2011-150 was deferred.

There being no further business, the meeting was adjourned at 4:06 p.m.

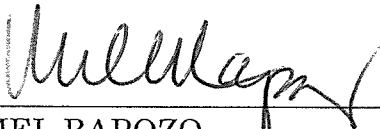
Respectfully submitted,



Darrellyne M. Simao

Council Services Assistant II

APPROVED at the Committee Meeting held on July 13, 2011:



MEL RAPOZO

VICE-CHAIR, COMMITTEE OF THE WHOLE